

102(e) as being anticipated by Yamaguchi. In Paragraph 6, claims 1, 3, 5, 7 – 14, 18 – 24, 34, and 36 – 42 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Gayoso in view of Dim et al. Lastly, in Paragraph 7, claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Gayoso in view of Dim et al. Because the Yamaguchi, Gayoso, and Dim et al. patents were issued after the December 7, 2001 filing date of the instant application, these references can be prior art only under 35 U.S.C § 102(e).

The Dim et al., Gayoso, and Yamaguchi patents are believed by the Examiner to substantially describe or show, but not to claim, the same subject matter as the above noted rejected claims.

Mr. Marsh, in his attached Declaration, states that he is the inventor of the inventions described and claimed in instant application, and that he is the inventor of U.S. Patent 6,142,721, filed January 30, 1998 and issued November 7, 2000. A copy of his '721 patent is attached to Mr. Marsh's Declaration.

As shown by Paragraphs 12 – 14 of Mr. Marsh's Declaration, the disclosures in the '721 patent show that he conceived and completed his invention, as described by the rejected claims, in this country prior to the filing dates of the Yamaguchi, Dim et al, and Gayoso references. Therefore, in accordance with 37 CFR §1.131, the Yamaguchi, Dim et al, and Gayoso references should be removed as prior art applied against the instant application.

Because Mr. Marsh's '721 patent describes the subject matter set out in the rejected claims in the instant application, the '721 patent is a constructive reduction to

practice (completion) of Mr. Marsh's inventions (as described by the rejected claims in this application) in this country at least as early as January 30, 1998, the filing date of the '721 patent, before the U.S. filing dates of the Yamaguchi, Gayoso, and Dim et al. references.

The instant application claims the benefit of Mr. Marsh's U. S. Provisional Patent Application No. 60/254,106, filed December 8, 2000, and of U. S. Provisional Patent Application No. 60/281,524, filed April 4, 2001. Because both these provisional applications were filed within one (1) year of the issuance of the '721 patent, (i.e., within one year of November 7, 2000), and because these provisional applications fully support the subject matter of the rejected claims, the '721 patent is not prior art with respect to the instant application.

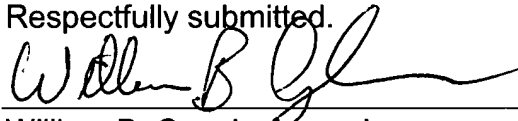
In Paragraphs 12 – 14 of his Declaration, Mr. Marsh points out where in the specification and drawings of his '721 patent, he disclosed the subject matter of claim 1 of the instant application. This shows clearly that Mr. Marsh had completed his invention, as described by the rejected claims, in this country prior to the filing dates of the Yamaguchi, Dim et al, and Gayoso references.

It is respectfully submitted that all of the Yamaguchi, Gayoso, and Dim et al. references are therefore effectively "sworn behind" by Mr. Marsh's attached Declaration and should be removed as prior art with respect to the instant application in accordance with 37 CFR §1.131. Because the rejected claims were rejected solely on the basis of the Yamaguchi, Dim et al. and Gayoso references, the rejected claims are properly allowable without amendment. It is therefore requested that the final rejection of these

Appln No. 10/020,266  
Amendment Dated May 12, 2005  
Reply to Office Action of April 13, 2005

claims be withdrawn and that a timely Notice of Allowance of claims 1 – 24, 26, 27, and  
29 – 43 be issued.

Respectfully submitted.



---

William B. Cunningham, Jr.  
Registration No. 26,155  
Polster, Lieder, Woodruff & Lucchesi, L.C.  
12412 Powerscourt Drive, Suite 200  
St. Louis, MO 63131  
(314) 238-2400  
(314) 238-2402 (fax)

Attachments

1. Declaration of Jeffrey D. Marsh
2. U.S. Patent 6,142,721